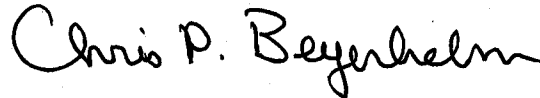


For: FSA Offices

The Food, Conservation, and Energy Act of 2008 (2008 Act) Loan Servicing Provisions

Approved by: Acting Deputy Administrator, Farm Loan Programs



1 Overview

A Background

The 2008 Act (Pub. L. 110-234), enacted May 22, 2008, (replaced by Pub. L. 110-246; June 18, 2008), made several changes impacting direct loan servicing that were effective immediately.

B Purpose

This notice:

- continues the policies established by Notice FLP-508
- provides guidance about the 2008 Act’s changes which affect loan servicing and property management policies and regulations
- obsoletes Notice FLP-523.

Note: 4-FLP and 5-FLP are being updated on an ongoing basis as CFR is being revised.

C Contact

County Offices shall contact the State Office with any questions. State Offices shall contact Michael Cumpton, LSPMD at 202-690-4014.

2 Acceleration and Foreclosure Moratorium

A Effects of Moratorium

1-FLP, subparagraph 41 G provides that FSA will **not** “accelerate or foreclose a loan before a discrimination complaint is closed”. Under the 2008 Act, there also is a moratorium on the acceleration or foreclosure for certain borrowers who have a pending program discrimination complaint, or file a program discrimination complaint that is **accepted** as valid by USDA, Office of Adjudication and Compliance (OAC).

Disposal Date	Distribution
July 1, 2010	All FSA Offices; State Offices relay to County Offices

Notice FLP-541

2 Acceleration and Foreclosure Moratorium (Continued)

B Flagging Borrowers With an Accepted Complaint

When the State Office is notified by OCR or LSPMD that the borrower has an “accepted” complaint, it will process ADPS Transaction “5G”, “Establish Descriptive Code”, using Descriptive Code “7” to establish the indicator for accounts that may be eligible for a moratorium. The effective date of the “5G” transaction will be the date the complaint was accepted by OAC.

Note: State Offices will monitor all accounts flagged “OAC1”.

The State Office will process ADPS Transaction “5H”, “Remove Descriptive Code”, using Descriptive Code “7” at the conclusion of the moratorium according to this notice.

3 Suspension of Interest Accrual and Offset

A Effects of Moratorium

During the period described in subparagraphs B and C, if the borrower has an accepted complaint at OAC **and** the account is at the point of acceleration or in foreclosure, interest will **not** accrue and no offsets will be taken on any FLP loan made under CONACT, Subtitle A, B, or C. These subtitles include FO's, SW's, RL's, OL's, and EM's and any cost recoverable associated with these loans. Suspension of interest and offsets:

- only applies to accounts with accepted program discrimination claims that are at the point of acceleration or in foreclosure as defined in subparagraph B
- will end on the date the claim is resolved under subparagraph C.

IF...	THEN...
FSA prevails on the discrimination claim	<ul style="list-style-type: none">• the borrower will be liable for the interest that would have accrued during the suspension• all offsets and servicing actions will resume on the ending date of the suspension.
the borrower prevails on the discrimination claim	FSA will proceed according to the settlement agreement or court order, as appropriate. The interest suspended during the moratorium will not be added back to the account unless specifically required by the settlement agreement or court order.

If any requests for debt settlement or payoff during the suspension are received, contact LSPMD.

Notice FLP-541

3 Suspension of Interest Accrual and Offset (Continued)

B Beginning Date of Moratorium

For those borrowers who:

- had a pending program discrimination claim **and** were at the point of acceleration or foreclosure as of May 22, 2008, the suspension was effective as of May 22, 2008
- have a program discrimination claim accepted by OAC after the effective date of the 2008 Act (May 22, 2008) **and** later reach the point of acceleration or foreclosure, the suspension will begin at the point of acceleration or foreclosure
- are at the point of acceleration or foreclosure **and** then have a program discrimination claim accepted by OAC after the effective date of the 2008 Act (May 22, 2008), the suspension will begin on the date the claim is accepted by OAC.

The point of acceleration is the **earliest** of the following:

- the day after all rights offered on FSA-2521 or FSA-2525 have expired, if the borrower does **not** appeal
- the day after all appeals resulting from FSA-2521 or FSA-2525 are concluded, if the borrower did appeal and FSA prevailed on the appeal
- the day after any appeal rights have concluded relating to the failure to graduate under 4-FLP, paragraph 48
- any other time when, because of litigation, third party action, or other unforeseen circumstance, acceleration is the next step for FSA in liquidating the account.

A borrower is considered to be at the point of foreclosure anytime **after** acceleration.

C Ending Date of Moratorium

The suspension will end on the **earlier** of the following:

- date the discrimination claim is resolved by OAC, according to notification of SED by OCR
- date that a court of competent jurisdiction renders a final decision on the claim, if the borrower appeals the decision of OAC.

Notice FLP-541

3 Suspension of Interest Accrual and Offset (Continued)

D Servicing of Nonprogram Loans and Accounts Currently Not Collectible (CNC)

The 2008 Act did **not** give FSA the authority to suspend interest or offsets on any loans other than FO's, SW's, RL's, OL's, and EM's. Interest accrual and offsets will continue to be taken on all other loans, including NP loans. Accounts that have no security remaining that have been accelerated or where all loans are mature, such as those classified as CNC, also will continue to accrue interest and be subject to offset.

4 Farm Loan Operations Office (FLOO) and Borrower Moratorium Notifications

A Notification of Moratorium

The borrower will be notified of the temporary suspension of interest accrual and offset under the moratorium by SED, or State Office designee, using Exhibit 1 with a courtesy copy FAXed to FLOO, Loan Servicing Group (LSG) at the following:

- 314-539-3111 for State Offices coded 1-32 (LSG1)
- 314-539-6447 for State Offices coded 33-64 (LSG2).

Note: The offset is **not** canceled, but only temporarily suspended until the claim is resolved.

FLOO will update the borrower's account to suspend interest accrual and offset activity.

B Lifting of Moratorium

Exhibit 2 will be used by SED, or State Office designee, to inform the borrower that the moratorium has ended. FLOO, LSG will be FAXed a courtesy copy and notified by separate correspondence of the requirements of any Settlement Agreement about interest accrual and offsets.

If FSA prevails, the suspended interest will be reinstated and interest accrual and offsets will immediately resume.

Notice FLP-541

5 Implementing Other 2008 Act Provisions

A Homestead Protection Option to Purchase

If the lessee is a member of a socially disadvantaged group, as defined in 5-FLP, Exhibit 2, the rights of the lessee to purchase the homestead property, as described in 5-FLP, subparagraph 300 A, are extended to 1 member of the lessee's immediate family (parents, children, and siblings) who has been chosen by the lessee.

Note: The former borrower must be eligible for Homestead Protection and successfully lease the property (be the lessee) under Homestead Protection before they can choose an immediate family member to purchase the property.

B Graduation

CFR and handbooks are being revised to ensure that borrower training, assessment, supervised credit, and market placement are all used to transition borrowers to commercial credit as soon as possible. FSA graduation policies continue in effect.

Moratorium Notice

The following is an example Moratorium Notice that will be sent to the borrower by SED, or State Office designee, when it is determined that the moratorium has begun on an account. FAX a courtesy copy to FLOO, LSG according to subparagraph 4 A.

Dear (Borrower's Name),

This is to inform you that the Food, Conservation, and Energy Act of 2008 (2008 Act) enacted on May 22, 2008, requires several changes to your account.

Under section 331A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981a), during the period you have a program discrimination claim accepted by the USDA, Office of Adjudication and Compliance (OAC) as valid, AND your account has reached the point of acceleration or foreclosure, the acceleration and foreclosure will be put on hold and interest accrual and offset will be temporarily suspended on Farm Service Agency (FSA) Farm Ownership, Soil and Water, Recreation, Operating, and Emergency loans. FSA was not given the authority by the 2008 Act to suspend interest accrual or offset on other types of loans or non-program loans. Please refer to your Promissory Note for your loan type. Our records show that you have _____ loans that qualify for suspension on interest and offsets.

This moratorium began on _____, and will continue until the USDA, OAC resolves your discrimination claim or a court of competent jurisdiction renders a final decision, whichever is earlier.

When the moratorium ends, you will be notified and:

1. FSA will act in accordance with any approved Settlement Agreement or court order, as appropriate.
2. If FSA prevails, the interest which was suspended will be added back to your account just as if the moratorium had not happened. Offsets will resume with no further offset notification, and FSA will continue servicing your account in accordance with published regulations and procedures.

Please do not hesitate to contact this office if any further information is required.

Sincerely,

CC: County Office
FLOO, LSG

Termination of Moratorium

The following is an example Termination of Moratorium that will be sent to the borrower by SED, or State Office designee, to inform the borrower that the suspension has ended.

Note: FLOO, LSG will be notified by courtesy copy and separate correspondence of the requirements of the Settlement Agreement about interest accrual and offsets.

Dear (Borrower's Name),

You were previously informed of a moratorium placed on your Farm Service Agency (FSA) program loan account under section 331A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981a) . FSA understands that your program discrimination claim was *[resolved by the USDA Office of Adjudication and Compliance / determined by a court of competent jurisdiction]* on _____ . On this date the moratorium on your account ended.

Now that your discrimination claim has been resolved,

[Insert appropriate language depending on the outcome of the resolution/Settlement Agreement/ court order:]

FSA will act in accordance with the approved Settlement Agreement or court order, as appropriate.

or

The interest which was suspended will be added back to your account just as if the moratorium had not happened. Offsets will resume with no further notice, and FSA will continue servicing your account in accordance with the published regulations.

Please do not hesitate to contact this office if any further information is required.

Sincerely,

CC: County Office